IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7188 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AJAYBHAI N CHOKSI - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR MUKUND M DESAI for Petitioner(s) : 1,
MR RM DESAI for Respondent(s) : 1 - 3.
MR AD OZA for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/01/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order or direction quashing and setting aside the Government Resolution of 5th August 1989 and also to quash and set aside the

communication of the District Education Officer, Ahmedabad City to the petitioner dated 11.6.1989 in refusing to grant 'No objection Certificate' to fill-up the post of Second Headmaster.

2. It appears from the record that the main contention on behalf of the petitioner was that the petitioner's school was having 24 classes in Secondary Section with students' strength of 1537 and 27 teachers, and the total strength of staff of entire school was 62 which included teaching as well as non-teaching staff. Considering the provisions of the Gujarat Secondary Education Regulations, more particularly, Regulation No. 19(4) thereof, it was contended on behalf of the petitioner that if a school is having more than 15 classes then such school will be entitled to appoint a Second Headmaster to assist the First Head. The petitioner submitted an application to the District Education Officer for granting No Objection Certificate to fill-up the post of Second Headmaster as they were having more than 15 classes, however relying upon the Government Resolution dated 5.8.1989 the District Education Officer did not grant permission and/or did not issue No Objection Certificate to fill-up the post of Second Grade Headmaster. According to the petitioner in view of the statutory provisions, more particularly Regulation No. 19(4) the State Government could not have issued such a Resolution dated 5.8.1989 and it is only the Board who can take appropriate decision and frame their own rules and

regulations.

3. Today, when the matter is called out, Shri Hemant Raval, learned advocate appearing on behalf of the respondent Board has submitted that subsequently the Board itself has passed a Resolution No. 537 of 1999 to abolish the post of Second Head and to delete Regulation No. 19(4) and thereafter the State Government vide Notification dated 11.7.2000 granted approval and deleted Regulation No. 19(4) of the Act. Therefore, it is submitted by him that now when the Regulation No. 19(4) itself is deleted and the post of Second Head is abolished, there is no question of granting any No Objection Certificate in favour of the petitioner to fill-up the post of Second Head. Shri Raval, learned advocate has relied upon one order dated 28.6.2002 passed by this Court [Coram: N.G. Nandi, J.] in Special Civil Application No. 1638 of 2000 with Special Civil Applications No. 2172 & 2174 of 2000 by which the learned Single Judge dismissed the aforesaid Special Civil Applications wherein orders passed by the District Education Officers refusing to grant NOC came to be challenged. It is therefore requested to dismiss the present Special Civil Application.

4. Heard the learned advocates appearing on behalf of the petitioner. From the pleadings and the averments on behalf of the petitioner it appears that the main contention on behalf of the petitioner was that in view of the statutory provisions more

particularly Regulation No. 19(4) it was not open for the State Government to issue Government Resolution dated 5.8.1989 to abolish the post of Second Head. Now, by subsequent Resolution the Board itself has decided to delete the Regulation No. 19(4) and to abolish the post of Second Head. Subsequently, the State Government has accepted the same and by notification dated 11.7.2000 the Regulation No. 19(4) came to be deleted and the post of Second Head has been abolished. An identical question came to be considered by the learned Single Judge of this Court in Special Civil Application No. 1638 of 2000 and other cognate matters where the learned Judge, considering the fact that the Regulation No. 19(4) has been deleted and the post of Second Head has been abolished, held that the order passed by the District Education Officer refusing to grant NOC to fill-up the post of Second Head is legal. The order passed by the learned Single Judge dated 28.6.2001 in the abovesaid Special Civil Applications reads as under;

> “In these Special Civil Applications, the petitioner has been challenging order dated 27.11.1979 Annexure "C" whereby respondent No.2 District Education Officer refused "NO OBJECTION CERTIFICATE" for the appointment of Second Head in the School run and managed by the petitioner-trust. Perusal of Annexure C, the impugned order, suggests that "NO OBJECTION CERTIFICATE" for appointment to the post of Second Head was refused for the reason of

> the post of Second Head having been abolished pursuant to Resolution dated 5.8.1989 passed by the Government in the Education Department. Thus, refusal to grant "NO OBJECTION CERTIFICATE" for the appointment to the post of Second Head in the School run and managed by the petitioner trust is because of the abolition of the said post. It need hardly be said that it is only when there is post of Second Head in the School, the request for grant of NO OBJECTION CERTIFICATE for appointment to the post of Second Head would arise because the availability of the post of Second Head would be the prerequisite and it is only thereafter the question of grant of NO OBJECTION CERTIFICATE for appointment to the said post would arise for consideration.
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> 2. In view of the above, the petitions being devoid of merits are liable to be dismissed. However it would be open to the petitioner to seek relief in accordance with law as regards the Resolution abolishing the post of Second Head deleting Regulation 19(4). The petitions are dismissed. Notice discharged."

In view of the above and considering the fact that the Regulation No. 19(4) has been deleted and the post of Second Head is now abolished, the contention on behalf of the petitioner will not survive and cannot be accepted. Under the circumstances, the present Special Civil Application is required to be dismissed.

5. For the reasons stated above, the petition fails. Rule is discharged. Ad-interim relief stands vacated forthwith.

[M.R. Shah, J.]

RMR.